

109TH CONGRESS
1ST SESSION

H. CON. RES. 330

Expressing the concern of Congress that the President's 2002 order authorizing electronic surveillance of United States persons without a warrant violates existing law prohibiting such electronic surveillance, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 22, 2005

Mrs. TAUSCHER (for herself and Mr. CONYERS) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary, and in addition to the Select Committee on Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

CONCURRENT RESOLUTION

Expressing the concern of Congress that the President's 2002 order authorizing electronic surveillance of United States persons without a warrant violates existing law prohibiting such electronic surveillance, and for other purposes.

Whereas the Federal Government has a duty to gather information about threats to the United States in a timely manner to prevent, disrupt, or otherwise mitigate potentially devastating attacks on the United States;

Whereas a legal framework has been established through the Foreign Intelligence Surveillance Act of 1978 (FISA) to

govern the use of electronic surveillance to acquire foreign intelligence information;

Whereas the standard of proof required for issuance of an order authorizing electronic surveillance or a physical search under FISA is a showing of probable cause that the subject of such order is a foreign power or an agent of a foreign power;

Whereas under FISA, the President may authorize electronic surveillance to acquire foreign intelligence information for up to one year without a court order in certain situations;

Whereas in urgent situations, the National Security Agency may conduct electronic surveillance for 72 hours before being required to seek retroactive permission from the Foreign Intelligence Surveillance Court;

Whereas the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56), signed by President Bush, expanded the scope of FISA by providing for multipoint electronic surveillance authority and expanded use of pen registers and trap and trace devices and access to business records;

Whereas other legislation, including the Intelligence Reform and Terrorism Protection Act of 2004 (Public Law 108–458), further expanded authorities under FISA;

Whereas during 2004, the Foreign Intelligence Surveillance Court approved 1,754 of the 1,758 requests for an order authorizing electronic surveillance or a physical search submitted by the Federal Government, during 2003, such Court approved 1,724 of 1,727 such requests, during

2002, such Court approved 1,228 of 1,228 such requests, during 2001, such Court approved 934 of 934 such requests, during 2000, such Court approved 1,012 of 1,012 such requests, and in 1999, such Court approved 880 of 886 such requests, with the remaining 6 being approved in 2000;

Whereas it was reported by the New York Times on December 15, 2005, that President Bush signed an order in 2002 authorizing the National Security Agency to listen to conversations of citizens of the United States as well as foreign nationals in the United States without seeking approval from the Foreign Intelligence Surveillance Court;

Whereas it was reported that under this program, the National Security Agency eavesdrops without warrants on up to 500 people in the United States at any given time; and

Whereas current law forbids warrantless electronic surveillance of United States persons: Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
2 *concurring)*, That Congress—

3 (1) expresses deep concern that the President's
4 2002 order authorizing electronic surveillance of
5 United States persons without a warrant violates ex-
6 isting law prohibiting such electronic surveillance;

7 (2) urges the President to rescind the 2002
8 order authorizing such electronic surveillance of
9 United States persons without a warrant;

1 (3) notes that the Foreign Intelligence Surveil-
2 lance Court has proved to be an expeditious means
3 of assuring approval of warrant requests and has re-
4 sponded favorably to nearly all warrant applications;

5 (4) reiterates its support for maintaining a
6 careful balance between national security and the
7 privacy of Americans;

8 (5) urges the President to report to Congress
9 on the number of United States persons who were
10 the subject of electronic surveillance without a war-
11 rant, the rationale for the selection of such persons
12 for such surveillance instead of pursuing an order
13 under the Foreign Intelligence Surveillance Act of
14 1978, and the plots or other terrorist actions that
15 were defeated subsequent to the use of this author-
16 ity; and

17 (6) calls on the President to submit a request
18 for legislation to Congress to amend such Act if the
19 President considers it to be in need of reform.

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